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Chairperson: Sir Nigel Rodley

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The meeting was called to order at 10.05 a.m.

Organizational and other matters

Draft general comment No. 35 on article 9 of the Covenant (continued)
(CCPR/C/GC/R.35/Rev.3)

1. **The Chairperson** invited the Committee members to consider the new text of paragraphs 20 and 21 (document without a symbol circulated in the meeting room), which had been prepared by the Rapporteur on the basis of proposals made at previous meetings.

Paragraph 20

2. **Mr. Neuman** (Rapporteur for the general comment) said that the fourth sentence of paragraph 20 had been rewritten to take into consideration the comments of Committee members. It stated that if early release was revoked, the continued detention constituted a new deprivation of liberty.

3. **Mr. Seetulsingh** asked why the sentence referred to an "alleged" breach of condition. He also wondered whether an element of proportionality could be introduced.

4. **The Chairperson** said that as the notion of proportionality was covered by the word "arbitrary", which had been defined by the Committee as "unnecessary and disproportionate", further clarification seemed unnecessary.

5. **Mr. Neuman** agreed with the Chairperson. The fourth sentence referred to an "alleged" breach of condition to ensure that it was broad enough to cover all situations, not only those in which the State's allegations were correct. The revocation of early release based on a claim of a breach of condition needed nonetheless to be carried out in accordance with the law.

6. **Mr. Seetulsingh** said that, given that the authorities often sought pretexts for the revocation of early release, he remained concerned that the meaning of "arbitrary" was unclear.

7. **The Chairperson** said that the general comment needed to be read as a whole and reiterated that the general comment defined the word "arbitrary" to denote an unnecessary and disproportionate detention. He nevertheless recognized Mr. Seetulsingh's concern and therefore suggested adding the words "and in particular must be absolutely necessary and not disproportionate to the seriousness of the breach" at the end of the sentence.

8. **Mr. Neuman** proposed that only "not disproportionate to the seriousness of the breach" should be added.

9. *Paragraph 20, as amended, was adopted.*

Paragraph 21

10. **Mr. Neuman** said that a footnote had been introduced in paragraph 21 to clarify in French, German and English what type of detention was referred to in the paragraph ("a non-punitive period intended to protect the safety of other individuals") with a view to preventing other translations. He considered that in the second sentence the words "the duration of detention must be proportionate to the gravity of the offences" were superfluous and he had therefore placed them in brackets.

11. **Ms. Chanet**, supported by **Ms. Seibert-Fohr**, said that the wording in brackets should be deleted. The kind of preventive detention in question should be proportionate to the future risk of the individual absconding. She maintained her view that in the third sentence the word "procedural" should be deleted.

12. **Mr. Neuman** agreed to that proposal.

13. **Mr. Shany** stressed the need to provide for some kind of limit on potential non-punitive detention. He had proposed the wording in brackets to that end. Without that wording, it would appear that, in effect, the Committee condoned the potential for a person who had already served a sentence for a serious crime, and who was still considered dangerous to serve a life sentence.

14. **Mr. Seetulsingh** asked for clarification of the word "non-punitive".

15. **The Chairperson** said that the expression had been coined in order to distinguish it from the punitive component of the sentence. The preventive nature of the non-punitive period was explained in the rest of the paragraph.

16. **Ms. Chanet** said that Mr. Shany's point was covered in the sentences preceding and following the bracketed text. However, a sentence could be added to the effect that the independent body referred to in the paragraph should have the authority to terminate a sentence in cases where the detainee no longer posed a risk.

17. **Mr. Neuman** proposed that in the second sentence the phrase "determine the continued justification of the detention" should be replaced with "decide whether continued detention is justified".

18. *It was so decided.*

19. **Mr. Shany** reiterated his view that the failure by the Committee to explicitly refer to limits on non-punitive detention might lead to a surge in the use of preventive detention. The term "compelling reasons arising from the gravity of the crimes" did not convey the message that there needed to be an upper limit on preventive detention.

20. **The Chairperson** said a failure by the Committee to allow for sentences with a non-punitive component could encourage States to impose life sentences for the types of serious crimes in question. The inclusion in the paragraph of the wording proposed by Mr. Shany could have an effect opposite to the one intended. The intention of the paragraph was to provide limitations on the new trend of having post-sentence retention of people who were perceived to be a public risk in some way. It was not an invitation to expand that path as a means of circumventing criminal law. He suggested that the paragraph should be adopted, as amended, but without the wording in brackets.

21. *Paragraph 21, as amended, was adopted.*

Paragraph 26

22. **Mr. Neuman** said that paragraph 26 described situations in which explicit notification of an arrest was not necessary.

23. **The Chairperson** suggested replacing the word "evident" with "self-evident" in the last sentence.

24. **Ms. Chanet** asked why any exceptions should be made to the principle of delivering notification of reasons for an arrest, particularly given that the Committee had little case law evincing the need to account for situations in which explicit notification was superfluous. It was also crucial that statements were taken at the time of arrest.

25. **Mr. Seetulsingh** said that the middle part of the last sentence should be removed since the reasons for an arrest might not always be self-evident in cases where "the arresting officer has found an illegal substance in the individual's possession"; the same substances were not illegal in all countries. The last part of the sentence, however, should remain.

26. **Mr. Neuman** said there were three options: delete the sentence; rewrite the sentence completely; or make a statement, to the opposite effect, that exceptions could never exist, thereby overruling the Committee's case law through the general comment. He proposed that the whole sentence should be deleted.

27. *It was so decided.*

28. *Paragraph 26, as amended, was adopted.*

Paragraph 27

29. *Paragraph 27 was adopted.*

Paragraph 28

30. **Mr. Neuman** said that the paragraph addressed cases where notification was not sufficient, such as when a child or a person with disabilities was arrested. Regarding the use of the word "guardians" in the third sentence, Australia had requested that the general comment should be consistent with the Convention on the Rights of Persons with Disabilities and, in addition, the Committee on the Rights of Persons with Disabilities had been consulted. As the word "guardians" had connotations that were not intended by the Committee, he proposed that it should be replaced with the words "persons they have designated". That proposal did not apply to the second sentence regarding children, where the term did not carry the same connotations or problems.

31. *It was so decided.*

32. *Paragraph 28, as amended, was adopted.*

Paragraph 29

33. *Paragraph 29 was adopted.*

Paragraph 30

34. **Mr. Neuman** said that the paragraph dealt with the timing and content of the notice of charges. The Danish Institute of Human Rights suggested that the word "promptly" should be further defined. That issue had already been discussed by the Committee.

35. **The Chairperson** said that what counted as "prompt" depended on the circumstances and progression of the investigation. The paragraph reflected the practices developed by the Committee on the basis of cases it had dealt with.

36. *Paragraph 30 was adopted.*

Paragraph 31

37. **Mr. Neuman** said that the United States had commented that a distinction should be made between military prosecutions in armed conflict, where the country considered that international humanitarian law was *lex specialis*, and military prosecutions in other situations, which were subject to article 9, paragraph 3. In response to that comment, he proposed the addition of the footnote: "In international armed conflict, detailed rules of international humanitarian law regarding the conduct of military prosecutions are also relevant to the interpretation of article 9, paragraph 3", and the inclusion of a reference to the paragraph in part VII of the general comment on the relevance of international humanitarian law to article 9.

38. **Mr. Rodríguez-Rescia** said that footnote 111 in brackets was unclear and proposed that it should be deleted.

39. **Mr. Salvioli**, referring to the footnote proposed by Mr. Neuman, suggested adding a comma at the end of the sentence, followed by "and do not exclude the application of article 9".

40. **Mr. Shany** said that, while he agreed with the substance of Mr. Salvioli's proposal, the form could give rise to confusion, as it was assumed that, if rules of international humanitarian law were relevant to the interpretation of article 9, the article applied.

41. **Mr. Neuman** proposed that the comma should instead be followed by "which continues to apply". The purpose of footnote 111 was not to encourage military prosecutions but to make States parties aware of the additional violations that might be committed in initiating such prosecutions.

42. **The Chairperson** said he took it that the Committee wished to adopt paragraph 31, on the understanding that footnote 111 would be retained and that the footnote proposed and amended by Mr. Neuman would be added.

43. *Paragraph 31, as amended, was adopted.*

Paragraph 32

44. **Mr. Neuman** said that the paragraph dealt with the issue of which persons could be considered as officers exercising judicial power under article 9, paragraph 3, of the Covenant. Belarus had objected to the assertion in the final sentence that public prosecutors were generally unsuited for the role, while another source had asked the Committee to clarify whether public prosecutors could ever be considered. Given that the Committee's standard practice had been to leave the door open to that extremely slim possibility, the original wording should stand.

45. **Mr. Ben Achour** said that the last sentence, which was liable to offend public prosecutors, was unnecessary as the need for the authority exercising judicial power to be independent, objective and impartial had already been conveyed in the previous sentence.

46. **Mr. Seetulsingh**, supported by **Mr. Shany** and **Mr. Fathalla**, said that, to avoid casting aspersions on public prosecutors, he would prefer wording to the effect that they should not be considered as officers exercising judicial power. He recalled that, in several criminal jurisdictions, officials appointed as directors of public prosecutions were, in theory, independent of the executive and not part of the judiciary, and could exercise a certain degree of discretionary power.

47. **Ms. Chanet** said that the institutional role of public prosecutors required them to be partial, as the Committee had found in a large number of communications, not just the ones listed in footnote 117. The word "generally" should therefore be removed from the last sentence.

48. **The Chairperson** said that the difference in function between judges and prosecutors was crucial, even when they were trained in the same school, as was the case in France. He suggested that the last sentence, which was problematic owing to its wording rather than its content, should be redrafted to read: "Accordingly, a public prosecutor cannot be considered as an officer exercising judicial power under paragraph 3."

49. **Mr. Shany** said that the word "Accordingly" should be deleted as it implied that public prosecutors were not independent, objective and impartial and thereby perpetuated the issue that the Committee had been trying to resolve.

50. **The Chairperson** said that, without the word "Accordingly", the Committee would fail to provide the reasons not to consider public prosecutors, and recalled that the Committee's practice was to cite precisely those reasons in its jurisprudence.

51. **Mr. Neuman**, noting that there were still some concerns over the paragraph, said that it contained nothing to imply that public prosecutors were not independent of the executive or other authorities. The only suggestion being made was that they were not independent of the prosecution.

52. **The Chairperson** said he took it that the Committee agreed to his suggestion for the final sentence.

53. *Paragraph 32, as amended, was adopted.*

Paragraph 33

54. **Mr. Neuman** said that the paragraph related to promptness and reflected the stance adopted by the Committee in a number of recent communications, namely that there was a presumptive rule under article 9, paragraph 3, according to which "promptly" meant within 48 hours, barring exceptional circumstances. Japan and Belarus had proposed deleting the reference to 48 hours as their interpretation of "promptly" differed, while Switzerland had requested that the delay should be extended to four days and the word "absolutely" removed from the second sentence on the grounds that article 9, paragraph 3, should not be stricter than article 5, paragraph 3, of the European Convention on Human Rights. The United States had said that the 48-hour limit should be framed as a recommended best practice rather than a rule, and Austria had proposed that the last sentence should be recast to take account of the interests of vulnerable groups. The United Kingdom had objected to the reference to a 24-hour limit in the case of juveniles, while another source had suggested redrafting the last sentence more extensively. Despite the many comments received, the paragraph should be adopted as it stood.

55. **The Chairperson** said that, during the Committee's first reading of the draft, it had been aware of virtually all the issues mentioned by sources and had held a long and thorough discussion. As a result, he hoped that there would not be any serious suggestion to revisit fundamental aspects of the paragraph.

56. **Mr. Ben Achour**, referring to the last sentence, said that, in the French text, the word "*jeunes*", which was not a legal term, should be replaced with "*mineurs*" or a suitable aiternative.

57. **The Chairperson** said that there had been an error in translation, which would be noted and rectified by the secretariat.

58. **Ms. Chanet** said that the last sentence should specify that the standards in question only applied to juveniles who had reached the age of criminal responsibility.

59. **Ms. Majodina** proposed that, in the third sentence, the words "torture and other" should be inserted before "ill-treatment" to reflect the frequent allegations of torture in various States parties.

60. **Mr. Neuman** said that article 9, paragraph 3, of the Covenant dealt exclusively with the criminal process and, by extension, persons who were above the age of criminal responsibility. The choice of the word "juveniles" in the English text was intended to exclude children below that age.

61. In response to Ms. Majodina's proposal, he said that, at first reading, the Committee had held the view that it should avoid being inflammatory or disrespectful of law enforcement officials. The word "ill-treatment" had thus been used to cover all the acts under article 7 of the Covenant as, unlike "torture", it did not pose a problem of connotation.

62. **The Chairperson** said that he was in favour of retaining the original wording, given that spelling out the worst form of ill-treatment would, if anything, be restrictive rather than

expansive. While it was important for the Committee not to give the impression that it was unaware of cases of torture involving law enforcement officials, the issue was addressed sufficiently in other parts of the general comment, and it was equally important not to send the wrong message to police forces that acted in accordance with the Covenant. He suggested adopting the paragraph as it stood, on the understanding that the French translation would be amended appropriately.

63. *Paragraph 33 was adopted on that understanding.*

Paragraph 34

64. **Mr. Neuman** said that the paragraph focused on the act of bringing individuals before the judge or other judicial officer, stipulating that the exercise should be automatic and that individuals should appear physically. Australia and the United States had both opposed the use of the word "physically" on the grounds that individuals could be brought before judicial officers by other means, such as video link, and that the requirement was not based on the text of the Covenant respectively. The Committee had always interpreted article 9, paragraph 3, as requiring the physical presence of detainees, and while the proposal to allow the use of video link was interesting, he did not think that it should be accepted. The Committee should, however, consider what role video link might play in the context of article 9, paragraph 4, in which there was no strong textual support for requiring physical presence.

65. Noting that another source had suggested deleting the words "in principle" in the last sentence, he recalled that the Committee had made a conscious decision to include the words because the priority was for individuals to appear promptly before a judge, meaning that, although the right to counsel of choice should in principle be observed, it was not always possible. Consequently, the paragraph should not be modified.

66. **Mr. Seetulsingh** said that the use of video link in very specific circumstances could enable individuals to appear before a judge or other judicial officer more promptly, and an exception should therefore be made. He proposed that the first sentence should be redrafted accordingly.

67. **Ms. Chanet**, supported by **Mr. Flinterman**, said that she was not in favour of creating an exception. The Committee should not allow practices that it had never encountered in its relevant case law, as it had no experience of imposing effective safeguards. Moreover, the physical presence of detainees gave the judge or other judicial officer the opportunity to conduct an adequate assessment of the treatment received in custody, whereas video link did not.

68. **Mr. Kälin** said that, although no relevant cases had been brought before the Committee, there had been instances in which geographical distance had made it very difficult for individuals to appear physically within an acceptable time frame. The problem lay in the interplay between the requirement to appear physically and the 48-hour limit established by the Committee. He would prefer to prioritize the latter and permit the use of video link, albeit only under the most exceptional circumstances.

69. **Mr. Shany** agreed with Mr. Kälin's proposal. The first sentence should therefore provide for the use of video link in cases where individuals could not appear physically within 48 hours.

70. **Mr. Vardzelashvili** said that he would prefer to exercise caution and maintain the requirement of physical presence, particularly as the Committee had given some leeway regarding the 48-hour limit in the previous paragraph. The situations in which geographical distance made it difficult to appear physically were often not conducive to the use of video link either.

71. **Mr. Neuman** said that the proposal to use video link was extremely dangerous, particularly if it was intended to substitute for physical presence entirely. The need to prevent ill-treatment could not be met fully if States parties were given the power to control the images available to the judge or other judicial officer.

72. **Mr. Seetulsingh** pointed out that the physical presence of detainees within 48 hours was not an absolute guarantee that any ill-treatment inflicted would still be visible and identifiable.

73. **The Chairperson** said that the current wording of the paragraph was based on the Committee's practice, and there did not appear to be a will to depart from that approach. There was a chance that the Committee might create an exception without being able to ensure that the rule would not be called into question.

74. **Mr. Iwasawa** said that there was some justification for the point made by Australia. The Committee was, however, concerned that the physical presence of a prisoner would be replaced by the use of video link. In his view, it was acceptable if a person was brought before the judge as soon as possible after the use of the video link.

75. **Mr. Kälin** said that the wording should not be changed. The draft general comment did not insist on the physical presence of the prisoner in absolutely every case, so, in the appropriate circumstances, it would still be possible for the Committee to develop an exception that was not dangerous to fit a particular case.

76. **Mr. Shany** said that, when States invoked the 48-hour rule, the Committee should still insist that, within those 48 hours, States parties should allow alternative measures, where possible, so as to deviate as little as possible from the requirement of the physical presence of an individual.

77. *Paragraph 34 was adopted.*

Paragraph 35

78. **Mr. Neuman** said that paragraph 35, which related to incommunicado detention and access to counsel, had attracted a number of comments. The statement by Ireland regarding a recent case involving evidence obtained during interrogation without counsel was beyond the scope of the paragraph and the general comment as a whole. Australia seemed to confuse the Committee's language concerning access to counsel with the right to counsel at Government expense. Switzerland had gained the impression that the Committee sought to redefine incommunicado detention. He felt that he bore some responsibility for that misunderstanding, because he had cited cases in which incommunicado detention had amounted to a violation of article 9, paragraph 3, of the Covenant in that it had prevented prompt presentation before a judge. If the issue caused confusion for Switzerland, perhaps there was no need to mention the cases, because it was self-evident that failure to bring a person to court inherently violated article 9, paragraph 3.

79. **Mr. Kälin** suggested that, in order to obviate confusion, the first sentence could be reworded to read: "Incommunicado detention prevents prompt presentation before a judge and thus violates paragraph 3."

80. **Mr. Shany** said that the need for the first sentence was questionable. The last sentence was the most important and it could be linked with prompt presentation before a judge. The individual also needed access to a lawyer so that his interests could be properly defended. The provision required more work.

81. **Mr. Seetulsingh** said that a situation might arise where a person was presented before a judge but had no access to counsel. He asked whether a separate provision on

access to counsel was envisaged. He added that incommunicado detention was also relevant to control orders.

82. **The Chairperson** said that the text could not be perfect, because incommunicado detention had different meanings in different contexts. Basically, it meant lack of access to the outside world, including a judge, but there might nonetheless not be adequate protection without access to counsel. In some Spanish-speaking countries, incommunicado detention could be ordered by a judge. The difficult issue was cases of de facto incommunicado detention, which was not specifically covered by the Covenant, except insofar as article 14 provided for the right to counsel. For that reason, the Committee tended to apply article 9, paragraph 3, and sometimes article 10, to interrupt and limit incommunicado detention by insisting on the requirement for access to counsel. He had doubts about the word "should" in the last sentence, but it was justified by the use of the phrase "at the outset", although the word "must" might have been preferable. The idea was difficult to express and the word "should" should be retained.

83. **Mr. Rodríguez-Rescia** said that the Chairperson had cleared up a difficulty for him. In Latin America, "*incomunicación*" was a perfectly legal, valid state in which a person was isolated from the world at large but was free to see his or her family or counsel. It was intended to prevent the individual concerned from committing a crime or engaging in any broader activity. It was not incommunicado detention in the sense conveyed in paragraph 35.

84. *Paragraph 35 was adopted.*

Paragraph 36

85. **Mr. Neuman** said that paragraph 36 related to the action a judge should take. No Government had commented, but one NGO had suggested that the phrase "where risks to the rights of the detainee can be more easily mitigated" should be replaced by "so as to minimize the risk of a violation of article 7". However, the Committee had made a deliberate decision on first reading to keep the provision generalized rather than spelling out the violation of article 7.

86. *Paragraph 36 was adopted.*

Paragraph 37

87. **Mr. Neuman** said that paragraph 37 concerned the entitlement to trial within a reasonable time or to release. The Child Rights Information Network had suggested the following wording for the last sentence: "Pretrial detention of juveniles should not only be exceptional but a measure of last resort and, where it occurs, children are entitled to be brought to trial in speedy fashion under article 10, paragraph 2 (b)." Amnesty International suggested that, in the previous sentence, the word "should" should be replaced by the word "must". He agreed with that suggestion.

88. **The Chairperson** asked whether the Rapporteur endorsed the wording suggested by the Child Rights Information Network. He himself was in favour of adopting it.

89. **Mr. Neuman** said that the issue was largely covered by the last sentence of paragraph 38, which read: "Pretrial detention of juveniles should be avoided to the fullest extent possible."

90. *Paragraph 37, as amended, was adopted.*

Paragraph 38

91. **Mr. Neuman** said that paragraph 38 related to pretrial and alternative measures. The language used came from general comment No. 32 relating to article 14 of the Covenant, and he therefore preferred it to the wording suggested by one NGO. The United States had expressed opposition to the paragraph, in that it considered the Committee to be extending the scope of article 9, paragraph 3. It was opposed to the idea that a judge was required to consider alternatives. He therefore suggested that the words "prior to charging" should be inserted after the words "the prohibition of arbitrary detention" in the third sentence. That should make it clear that the Committee was not talking in an expansive way about forms of detention.

92. **Ms. Chanet** said that she was not opposed to Mr. Neuman's suggestion, because the sentence was indeed ambiguous. The Committee should, however, take care not to contradict its own jurisprudence, as set out in footnote 142. The United States position seemed to be based on a misreading of the Covenant.

93. *Paragraph 38, as amended, was adopted.*

Paragraph 39

94. *Paragraph 39 was adopted.*

Paragraph 40

95. **Mr. Neuman** said that some States parties had commented on the paragraph, which related to the right to take proceedings for release from all detention, objecting to the Committee's view of the breadth of applicability of article 9, paragraph 4. The United States saw solitary confinement as a condition of detention and thus not applicable under article 9. The United Kingdom raised a similar point in relation to military detention. The Child Rights Information Network wished to add to the list of children taken into detention those detained for drug use and those with mental health problems systematically detained in mental health institutions. He would prefer not to expand the list. However, he recognized a lack of clarity in the phrase "detention of children for educational purposes"; although that was a traditional form of words, the United States seemed to think it related to compulsory education laws. He therefore suggested that the phrase should be amended to "detention for educational purposes of children in conflict with the law".

96. **The Chairperson** said that the United States view of solitary confinement was not material. The important point was the right to challenge the lawfulness of detention, whatever formulation was adopted.

97. **Mr. Seetulsingh** said that, since the case cited in footnote 156 seemed to refer to vagrancy, it should perhaps be placed earlier in the sentence.

98. **Mr. Neuman** said that, in fact, the case in footnote 156 was completely different in that it related to a soldier; however, it contained a list of various issues covered by article 9, paragraph 4, including the detention of children for educational purposes.

99. *Paragraph 40, as amended, was adopted.*

Paragraph 41

100. **Mr Neuman** said that there were two comments from NGOs on paragraph 41, which dealt with release from unlawful detention. The International Commission of Jurists had expressed concern that, under the current wording of the paragraph, an order for immediate release following a judicial decision that detention was unlawful was not immediately executable but required execution before becoming "operative" (*exécutoire*).

The Committee had discussed the substance and the wording at length on first reading to make sure that it was not telling States that they must comply with a lower court's order immediately, even if that order was subject to appeal, if the legal effect of the order was stayed pending the appeal.

101. **Mr. Kälin** said that the proposal by the International Commission of Jurists would create an ambiguity that the Committee had tried to avoid.

102. *Paragraph 41 was adopted.*

Paragraph 42

103. **Mr. Neuman** recalled that he had expressed doubts about the choice of words in paragraph 42 at first reading. The United States objection to the requirement of presentation before a court and the Australian suggestion about video links both applied in the context of the paragraph. He did not disagree with the rest of the Committee concerning the power of the courts to bring a person before the courts physically, but concerning the rules on presumptive presence in such cases. An individual had the right to insist on being brought before a court, without demonstrating a need, but that was not the way that such matters were usually conducted and the choice of words was, in his view, not appropriate. The Committee should also give some consideration to the question of video linking and whether a court could decide whether it wanted a video link or an individual's physical presence.

104. **The Chairperson** said that, in criminal cases, the requirement of an individual's physical presence before a court was already covered under article 9, paragraph 3. The problem related to all the other detentions to which article 9, paragraph 4, applied that did not involve criminal proceedings. Individuals in such cases needed direct judicial supervision, like other detainees. He would like to see a text that gave an individual the right to come before the courts. He recalled that the origin of challenging the lawfulness of detention resided in the principle of habeas corpus, under which a court ordered that a person should be physically brought before it.

105. **Mr. Neuman** said that the practice had for centuries been to have the rule nisi as to whether the writ of habeas corpus should be issued. That was decided on the basis of a legal argument as to whether there was reason why the prisoner should be brought into court. Only when that argument was resolved was the prisoner brought into court. Presentation before a judge was therefore not the usual consequence of habeas practice. That, however, was a historical question, which was not for the Committee to decide. The question for the Committee was what should be required under article 9, paragraph 4.

106. **The Chairperson** said that it should give individuals protection in cases where article 9, paragraph 3, did not apply.

107. **Mr. Neuman** suggested that the draft text should be adopted, despite his own reservations. He had not yet been able to come up with an alternative text.

108. **The Chairperson** said that the discussion on paragraph 42 could resume at the 112th session. Meanwhile, the Committee had made good progress, although some difficult issues remained to be resolved.

The meeting rose at 12.45 p.m.